

REMARKS

Claims 1-5, 8-9, 11-15, 18 and 25-35 are pending in the present application. By this Amendment, previously presented claims 1, 8, 11 and 18 have been amended; previously presented claims 6-7, 10, 16-17 and 19-24 have been canceled; and new claims 25-35 have been added. Applicants respectfully request reconsideration of the present claims in view of the foregoing amendments and the following remarks.

I. Prior Art Rejection:

Rejection of Previously Presented Claims 1-2 and 11-12 Under 35 U.S.C. §102(b) In View Of U.S. Patent No. 246,335 (Page)

Previously presented claims 1-2 and 11-12 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 246,335 issued to Page (hereinafter, "Page"). This rejection is respectfully traversed.

In order for the disclosure of Page to anticipate Applicants' claimed invention as embodied in independent claims 1 and 11, the disclosure of Page must disclose each and every claim feature recited in independent claims 1 and 11. See, for example, *Finnigan Corp. v. International Trade Commission*, 180 F.3d 1354, 1365, 51 USPQ2d 1001, 1009 (Fed. Cir. 1999), in which the Court stated "In order to establish anticipation, a prior art reference must disclose every feature of the claimed invention."

The disclosure of Page fails to disclose at least the following claim features recited in independent claims 1 and 11:

(1) a method for controlling the growth of fungi in a textile material or on a textile substrate comprising combining the textile material or textile substrate with permethrin (claims 1 and 11); and

(2) a method for controlling the growth of fungi on a textile substrate which comprises contacting the textile substrate with a fungicidally effective amount of a composition, wherein at least 50% by weight of the composition remaining on or in the textile substrate is present below a top surface of the textile substrate (claim 11).

Accordingly, the disclosure of Page cannot anticipate Applicants' claimed

invention as embodied in amended independent claims 1 and 11.

For at least the reasons given above, the disclosure of Page fails to anticipate Applicants' claimed invention as embodied in amended independent claims 1 and 11. Since claims 2 and 12 depend from independent claims 1 and 11 and recite additional claim features, the disclosure of Page fails to anticipate Applicants' claimed invention as embodied in dependent claims 2 and 12. Accordingly, Applicants respectfully request withdrawal of this rejection.

Rejection of Previously Presented Claims 1-5 and 7-18 Under 35 U.S.C. §103(a) in View of U.S. Patent No. 3,769,060 (Ida) In Combination With U.S. Patent No. 3,837,988 (Hennen), U.S. Patent No. 6,117,440 (Suh) and International Patent Application Publication No. WO02/35930 (Barazani)

Previously presented claims 1-5 and 7-18 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of U.S. Patent No. 3,769,060 issued to Ida et al. (hereinafter, "Ida") and further in view of U.S. Patent No. 3,837,988 issued to Hennen et al. (hereinafter, "Hennen"), U.S. Patent No. 6,117,440 issued to Suh et al. (hereinafter, "Suh") and International Patent Application Publication No. WO02/35930 to Barazani (hereinafter, "Barazani"). This rejection is respectfully traversed.

The teaching of Ida is directed to fabrics having incorporated therein or thereon a plurality of finishing agents. Suitable disclosed finishing agents include, but are not limited to, moth proofing agents and mildew proofing agents.

The teaching of Hennen is directed to floor coverings comprising an upper nonwoven layer optionally bonded to one or more lower layers such as a foam layer. In Example 2, Hennen discloses a lower layer comprising an open cell foam backing layer, wherein the backing layer comprises a fungicide incorporated therein.

The teaching of Suh is directed to compositions for controlling dust mites and allergens produced by dust mites in household products such as carpet. Although the teaching of Suh discussing prior use of permethrin as a chemical agent for fighting dust mites in column 3, lines 1-3, Suh specifically teaches away from the use of permethrin as a component in Suh's disclosed compositions for controlling dust mites. In addition, Suh directs one skilled in the art to utilize an acaricidal ingredient such as benzyl benzoate in combination with other composition

components in Suh's disclosed compositions. See, for example, column 5, lines 10-22; column 6, lines 12-16; and column 7, lines 20-25.

The teaching of Barazani is directed to groundcover pest control sheets comprising a top film layer and a bottom film layer, wherein the bottom layer comprises a herbicide and optionally a pesticide selected from insecticides and fungicides. The disclosed groundcover pest control sheets are used to control pests in agriculture, horticulture and gardening applications.

As noted on 3, lines 22-23 of the June 18, 2010 office action, each of the teachings of Ida and Hennen fails to disclose, teach or suggest the use of an acaricide, and especially permethrin, in a textile material. However, the June 18, 2010 office action concludes that one skilled in the art, given the teaching of Ida, would (1) seek out the teachings of Hennen, Suh and Barazani, (2) combine at least one fungicidal compound with permethrin to form a resulting composition, and (3) utilize the resulting composition in a method for controlling the growth of fungi and house dust mites in a textile material as recited in Applicants' claimed invention. Applicants disagree.

Initially, it is not clear to Applicants why one skilled in the art, given the teaching of Ida directed to multiple treated cloths or fabrics in combination with an understanding of the general state of the art, would seek out the teachings of (1) Hennen directed to floor coverings, (2) Suh directed to specific compositions for treating carpets, and (3) Barazani directed to groundcover pest control sheets comprising multiple film layers with at least one film layer comprising a herbicide. It is difficult for Applicants to understand why one skilled in the art would combine such divergent teachings, and subsequently pick and choose select components from each of the teachings so as to result in Applicants' claimed invention.

More importantly, even if one skilled in the art would have been motivated to combine the teachings of Ida, Hennen, Suh and Barazani, it is difficult for Applicants to understand why one skilled in the art, given the teaching of Suh, which directs one skilled in the art to avoid permethrin and utilize other acaricides, such as benzyl benzoate, to fight mites, would combine at least one fungicidal compound with permethrin, instead of benzyl benzoate, to form a resulting composition, and subsequently utilize the resulting composition in a method for

controlling the growth of fungi and house dust mites in a textile material.

As noted above, the teaching of Suh specifically teaches away from the use of permethrin as a mite-fighting agent, and specifically discloses the advantages of utilizing other acaracides, such as benzyl benzoate, instead of permethrin. See again, Suh, column 6, lines 12-16; column 3, lines 21-34; and column 10, lines 16-23. Consequently, Applicants respectfully submit that the proposed combination of the teachings of Ida, Hennen, Suh and Barazani, even if proper (and Applicants submit that the proposed combination is improper due to the proposed combination of divergent subject matter), teaches away from Applicants' claimed method given that the proposed combination of the teachings of Ida, Hennen, Suh and Barazani directs one skilled in the art to utilize acaracides such as benzyl benzoate, and avoid permethrin.

Applicants respectfully submit that for one skilled in the art to combine select features from the prior art as suggested in the June 18, 2010 office action so as to utilize permethrin instead of other disclosed acaracides, such as benzyl benzoate, would alter the principle operation of the prior art and especially the teaching of Suh. The Federal Courts have frowned on such a combination of the prior art. As stated by the Court in *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959), "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious."

For at least the reasons given above, Applicants respectfully submit that the proposed combination of the teaching of Ida with the teachings of Hennen, Suh and Barazani fails to make obvious Applicants' claimed invention as recited in independent claims 1 and 11. Since claims 2-5, 8-9, 12-15 and 18 depend from independent claims 1 and 11 and recite additional claim features, the proposed combination of the teaching of Ida with the teachings of Hennen, Suh and Barazani also fails to make obvious Applicants' claimed invention as recited in claims 2-5, 8-9, 12-15 and 18 (previously presented claims 7, 10 and 16-17 have been canceled). Accordingly, withdrawal of this rejection is respectfully requested.

II. New Claims 25-35:

New claims 25-35 are directed to various embodiments of Applicants' claimed

methods. Support for new claims 25-35 may be found throughout Applicants' original specification (i.e., WO 2005/053400) including, but not limited to, the following locations: paragraph [0050] on page 11 and original claims 4-6 (claims 25-27, 30-31 and 34-35); paragraph [0060] on page 13 and original claims 4-6 (claim 28); paragraph [0015] on pages 4-5, paragraph [0050] on page 11 and original claims 1 and 5 (claim 29); and paragraph [0057] on page 12 and original claims 8-9 (claims 32-33).

For reasons similar to those given above, new claims 25-35 are allowable over the art of record.

III. Conclusion:

For at least the reasons given above, Applicants submit that claims 1-5, 8-9, 11-15, 18 and 25-35 define patentable subject matter. Accordingly, Applicants respectfully request allowance of these claims.

Should Examiner Levy believe that further action is necessary to place the application in better condition for allowance, Examiner Levy is respectfully requested to contact Applicants' representative at the telephone number listed below.

No additional fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 503025.

Respectfully submitted,
WITHERS & KEYS, LLC
/James D. Withers/
By: James D. Withers
Reg. No. 40,376

WITHERS & KEYS, LLC
P.O. Box 2049
McDonough, Georgia 30253
678-485-8324

W&K Matter No.: 10075.0044USWO
Syngenta Docket No.: 70340